TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 721

SAMUEL TAYLOR, PETITIONER,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED MARCH 3, 1948.

CERTIORARI GRANTED APRIL 5, 1948.

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IN THE SUPREME COURT OF ALABAMA, FIRST DIVISION

[File endorsement omitted]

No. 279

Ex Parte Samuel Taylor

In Re Samuel Taylor, Appellant,

vs.

State of Alabama, Appellee

Petition for Writ of Error Coram Nobis—Filed September 18, 1947

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama.

Your Petitioner, Samuel Taylor, respectfully represents and shows unto this Honorable Court the following facts upon which he seeks affirmative relief:

1. That your Petitioner is a citizen of the United States of America and of the State of Alabama and is over the age of twenty-one years.

2. That your Petitioner was indicted, tried and convicted at the Circuit Court of Mobile County, Alabama on a charge of rape and sentenced to suffer the death penalty, from which judgment your petitioner prosecuted an appeal to the Supreme Court of Alabama where the said judgment was duly affirmed on the 24th day of April, 1947, the style of the cause being Samuel Taylor vs. The State of Alabama, First Division No. 279 and reported in Volume 30, Southern Reporter 2nd Series at page 256.

3. Your Petitioner further shows that said judgment, verdict and sentence were based on an alleged confession which was introduced in evidence on the trial of said cause by the State. That said confession was obtained by the use of force, fear and intimidation, threatened and inflicted.

on and against Petitioner. That said confession was not freely and voluntarily made by your Petitioner, and had [fol. 3] these facts been made known to the Court at that time said confession would have been inadmissible in evidence against your Petitioner under the laws and rules of the State of Alabama and this Honorable Court.

4. That your Petitioner was arrested by police officers of the City of Prichard, Alabama at 11:30 P. M. on June 29, 1946. That arrested at same time as your Petitioner were three other men, to-wit: Lawrence H. Franklin, Johnnie Kimbrough and Calvin Jones. That your Petitioner and the other three men named above were taken into the city jail at Prichard, Alabama. Before they were docketed or placed in a cell, police officers on duty at that time whose names are unknown to your Petitioner beat, kicked and bruised your Petitioner and said three men in an effort to obtain a confession of a robbery. That after Petitioner and the three other prisoners were docketed they were taken by said police officers one at a time in a small room in said jail. That all four of said men were brutally beaten, kicked and bruised in an effort to obtain said confession. That your Petitioner did, in fact, confess to said robbery but that after he had made this confession, he was retained in said room in the Prichard, Alabama jail by said police officers and told that he must make a confession of the rape for which he was later convicted and sentenced by the Circuit Court of Mobile County as aforesaid. That he was further beaten, kicked and bruised by said police officers but refused to make a confession of said rape. That he was thereafter returned to his cell in the said City Jail at Prichard, Alabama by said police officers at an early hour in the morning of Sunday, June 30, 1946. That he was not further molested throughout the day of said Sunday but that during the late hours of Sunday night, June 30, 1946, and early morning July 1, 1946, he was further beaten, bruised, threatened and intimidated by the police officers of the City of Prichard Alabama and was told he must confess to said rape. That your Petitioner still refused to make a confession of said crime although he was beaten, bruised and threatened as aforesaid. That said mistreatment and questioning by the police officers of the City of Prichard continued for a period of several hours and upon Petitioner's failure to confess to said crime he was again returned

to his cell where he was left unmolested throughout the day of Monday, July 1, 1946. That on the night of Monday, July 1, 1946 and the early morning of Tuesday July 2nd, 1946, Petitioner was again subjected to similar mistreatment and questioning as on the previous night. Again your [fol. 4] Petitioner maintained his innocence of said crime and after several hours was returned to his cell where he was left unmolested until the night of Tuesday, July 2 and early morning of Wednesday, July 3, 1946. On that night he was again visited by the police officers of the City of Prichard as aforesaid and was subjected to more brutal and cruel beatings and mistreatment. He was told unless he did confess to the crime of rape as aforesaid he would be continually subjected to such brutal mistreatment and intimidation until he did, in fact, confess to said crime. That your Petitioner was so fearful for his life, health and safety that he made a confession of said crime in the early morning hours of Wednesday, July 3, 1946. He was told by said police officers of the City of Prichard that if he made any mention of the fact that he was beaten and mistreated as aforesaid that he would be subjec. d to even more cruel beatings and mistreatment. That at approximately three o'clock in the morning of July 3rd, 1946 Petitioner was brought in to a carefully selected and arranged group for a formal confession of said crime of rape. That none of the persons who witnessed said formal confession which was later introduced in evidence on the trial of said cause as aforesaid, had any knowledge of the fact that Petitioner had been beaten, threatened, abused and mistreated by the police officers of the City of Prichard as aforesaid, in order to obtain said confession, with the exception of Prichard Police Sergeant "Buster" Wilkes who had participated in the beatings of Petitioner since his arrest on Saturday, June 29, 1946. That said Sergeant "Buster" Wilkes perjured himself on the trial of said cause by falsely testifying that Petitioner was not subjected to any mistreatment in connection with making said confession. Attached hereto and made a part hereof, marked "Exhibit A", is an affidavit of Johnnie Kimbrough, substantiating the above facts. Attached hereto and made a part hereof, marked "Exhibit B" is an affidavit of Lawrence Franklin, substantiating the above facts. Attached hereto and made a part hereof, marked "Exhibit

C'', is an affidavit of Calvin Jones, substantiating the above facts.

5. That your Petitioner was put in such great fear for his future safety after having been subjected to such mistreatment as aforesaid, and after having been threatened with even worse physical mistreatment by the police officers of the City of Prichard as aforesaid if your Petitioner did mention said beatings to any person, that he failed and refused by reason of such fear to mention this mistreatment and extortion of said confession from him to his attorney who was appointed by the Court to defend [fol. 5] him on the trial of said cause in the Circuit Court of Mobile County as aforesaid. That your Petitioner at that time was ignorant of his rights and was wholly ignorant of court procedure and had no knowledge of his rights or how to protect his interests. That when your Petitioner was asked by his said attorney who represented him on the trial of said cause as aforesaid if he was mistreated or beaten in any fashion by the law enforcement officers in connection with the giving of said confession he replied in the negative, being uneducated and ignorant as aforesaid, and fearful of further reprisals by said police officers. That while he — ably represented on the trial of said cause in the said Circuit Court of Mobile County, Alabama, by said attorney, his attorney was unaware of the facts averred above relating to said confession, and after having been told by your Petitioner that he was not subjected to any mistreatment, said attorney had no reason to inquire into the above facts and could not have through diligence discovered the above facts. That your Petitioner's present Counsel was not advised of the above facts until after Petitioner's conviction and the preparation and filing of a motion for a new trial and the overruling of motion for a new trial by the said Circuit Court of Mobile County and the appealing of Petitioner's case and the docketing of same and the decision of said Supreme Court of Alabama as aforesaid.

6. Your Petitioner further avers that his imprisonment, conviction and sentence of death and his present imprisonment is the result of a deprivation of due process of law and of his rights guaranteed to him by the Constitution of the State of Alabama and his conviction, sentence of death and his present imprisonment is the result of de-

privation of rights guaranteed to your Petitioner by the Constitution of the United States of America, in that the law enforcement officers of the State of Alabama obtained his conviction by the introduction in evidence at the trial of said cause of a confession which was forcibly extorted from your Petitioner as aforesaid, thereby denying to him due process of law and the rights guaranteed to him by and under the Constitution of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

7. Petitioner further avers that all the facts, circumstances and things alleged herein were unknown to Petitioner's attorney as aforesaid at the time of the trial of your Petitioner in the Circuit Court of Mobile County, Alabama and could not have been known to Petitioner's attorney by the exercise of reasonable diligence in time [fol. 6] to have otherwise presented the facts to the Trial Court.

Premises considered, your Petitioner prays that this Honorable Court will enter an order granting your Petitioner the right to file a Petition in the Circuit Court of Mobile County, Alabama, for a Writ of Error Coram Nobis to inquire into the facts alleged herein; and if the relief herein prayed for is not just, equitable and proper, then in the alternative your Petitioner prays for such, other, further, general or proper relief as may unto your Honors seem meet and proper. And in duty bound he will ever pray.

(Signed) Samuel Taylor.

(Signed) Nesbitt Elmore, Attorney for Petitioner.

STATE OF ALABAMA,
Montgomery County:

Before me, the undersigned authority in and for said State and County, personally appeared Samuel Taylor, who being made known to me and first duly sworn on his oath deposes and says: That the facts and matters set forth in the foregoing Petition are true and correct.

(Signed) Thomas S. Adair, Notary Public, State at Large. Notary Public, State at Large, Alabama. My Commission expires Feb. 7, 1951. Bonded by Standard Accident Insurance Co. of Detroit, Mich. (Seal.)

I hereby certify that I have served a copy of the foregoing Petition together with a copy of all exhibits contained therein on the Honorable A. A. Carmichael, Attorney General of Alabama, by placing a copy of the same in the United States mail properly addressed to him at the State Capitol, Montgomery, Alabama, postage prepaid, on this the 18th day of September, 1947.

(Signed) Nesbitt Elmore, of Counsel.

[fol. 7] EXHIBIT "A" TO PETITION

Montgomery, Alabama, September 17, 1947.

AFFIDAVIT OF JOHNNIE KIMBROUGH

My name is Johnnie Kimbrough. I am 22 years old. In June, 1946, I lived at 57 John Street in Prichard, Mobile County, Alabama. At the present time I am serving a ten year sentence for robbery in Kilby Prison at Montgomery, Alabama.

On the night of June 29, 1946, Saturday night, between 11 and 11:30, I was with Samuel Taylor, Lawrence Franklin and Calvin Jones on the streets of Prichard when two police officers of the City of Prichard in a squad car arrested the four of us and took us to jail. When we arrived in the docket room at the Prichard City Jail, the Desk Sergeant was not on duty. The four of us remained in the docket room until the Desk Sergeant returned. While we were waiting for his return, the officers who arrested us beat the other three boys including Sam Taylor but did not beat me. They whipped Samuel Taylor, Lawrence Franklin and Calvin Jones with clubs and blackjacks. I saw them whip Samuel Taylor with a club on his head and his arms. When the Desk Sergeant returned—he was Sergeant "Buster" Wilkes—the officers took us back to a dungeon and locked us up before we were docketed. They then brought us out one by one and beat each one of us. To the best of my recollection, Samuel Taylor was the first one the police officers took out of the dungeon. I could hear Sam holler and I also heard scuffling and blows being struck. I do not know where Sam was when he was being beaten, but

he was close enough to me for me to hear him holler. I do not know who was next taken out but I do know that I was the last one taken out of the dungeon. The officers took me in the docket room and beat me up pretty bad. They kept asking me questions about a robbery which I refused to confess.

After the officers were through beating me, they brought all four of us including Samuel Taylor back to the docket room where we were docketed. I was docketed on a robbery charge, but I do not know on what charge Samuel Taylor was booked. After we had been docketed, the police took Samuel Taylor and the other two boys back to their cells. [fol. 8] Sam's face was swollen bad. My head was pretty bloody and I was pretty dizzy. The officers sent me back to wash the blood off my head and when I returned they took me to the City Hospital in Mobile in a squad car. A Mobile City Hospital ambulance was sitting out front but the police did not use it. To the best of my recollection, it must have been around 1 or 1:30 in the morning of June 30th when the officers took me to the hospital. I stayed there twenty or thirty minutes and received medical attention and then the police brought me back to the Prichard jail. I was in pretty bad shape and I don't remember much about what happened during the next 24 hours.

On the night of Monday, July 1st and Tuesday, July 2nd, I heard the police beating Sam Taylor again and I heard him scream and holler many times. Since we were in separate cells I did not see Sam get beaten but I have been knowing him for some time and I know his voice when I hear it. I do not know why they continued to beat Sam on those two nights. I did not hear the police questioning Sam or hear any answers which he may have given, but I did hear him scream and holler. I heard scuffling and I heard blows being struck. I did not hear Sam holler anymore after that Tuesday night.

The next time I saw Sam Taylor was in October and November of 1946 when they brought him back from Kilby Prison and placed him in a cell with me right before our trial. Sam told me then that he had been beaten bad by the Prichard police for three or four straight nights.

I have read the foregoing statement consisting of two pages and the statements made therein are true and correct.
(Signed) Johnnie Kimbrough.

Subscribed and sworn to before me this 17th day of September, 1947. (Signed) Thomas S. Adair, Notary Public, State at Large. Notary Public, State at Large, Alabama. My commission expires Feb. 7, 1951. Bonded by Standard Accident Insurance Co., of Detroit, Mich. (Seal.)

[fol. 9] EXHIBIT "B" TO PETITION

Mobile, Alabama, September 11, 1947.

My name is Lawrence H. Franklin, Jr. I am 21 years of age. I live at 342 Rosedale Street, Lincoln Village, Prichard, Alabama. I live with my father.

On or about Saturday night, June 29, 1946, Samuel Taylor, Johnnie Kimbrough, Calvin Jones and I, were arrested on Craft Highway and Butler Avenue near 11 o'clock or 11:30 o'clock.

The four of us were taken to the Prichard jail in a scout car by police officers of Prichard. We were accused of having robbed a white man.

Even before we were put on docket, several of the Prichard police officers took us, one at a time, into an adjoining room to the docket room and beat each one of us.

They first took Calvin Jones into the room and kept him in there about ten or fifteen minutes. I was the next one taken into the little room. Two police officers were with me. They tried to make me say that I robbed the white man who had complained of being held up.

I told them that I didn't do it. One of the officers struck me with a black jack that was on a desk in the little room. I was not permitted to raise my hands to protect myself from the blows. I was struck so many times with the black jack and the officer's fists that my head was later so badly swollen that knots developed. Previous to my being taken into the little room, I had been beaten along with the other three boys arrested with me in the docket room. There I was knocked down and kicked in the stomach by members of the Prichard police force.

As a result of the two beatings that night my face was also bruised, and blood flowed freely from my nose.

Johnnie Kimbrough was the third one taken into the little room. When he came out of the room with the officers blood flowed from his head. He was evidently knocked unconscious by the officers' blows because he began to talk out of his head. An ambulance called at the police station but Johnnie had gained consciousness by that time, so the Prichard police would not permit him to be carried off. [fol. 10] I did notice that he had been shaved around the bruised places on his head, and I think it was believed at one time that his skull was fractured.

Samuel Taylor was the last one carried into the little room. Three policemen accompanied him. They kept him in there about fifteen minutes. When he came out I noticed that he was bleeding back of the ears, from the nose and the mouth. There was a visible bruise back of one of his ears. That night Samuel Taylor and I were placed in separate dungeons. The two other boys were placed in cells.

I heard police officers in Samuel's dungeon cell whipping him. I could hear blows being rained on his body. It was about three or four o'clock in the morning. As they beat Samuel they would ask him: "Didn't you do it?", evidently referring to the robbery about which there had been a complaint. At first Samuel said, "no, sir." Then later in what seemed to have been an almost breathless tone, he said, "yes, sir." The next week they got all of us out of our cells, lined us up in the docket room, and there was a white girl on the outside with a police officer.

She looked into the docket room, which was screened in, through the screen wire. The officer asked her something which I could not overhear, but he pointed toward me. She shook her head. Samuel Taylor was the next one pointed out. She nodded her head. The police sent Calvin Jones, Johnnie Kimbrough and me back to our cells. Samuel Taylor was taken elsewhere in the jail a distance from us. About an hour later I heard him holler as if in pain from being beaten. Almost every night he would holler. One night I heard noises coming from the direction where he was imprisoned, then I hear- him holler as he said, "no, sir, I didn't do it." Then I heard more noises as if someone was being knocked against the wall.

I was told that Samuel Taylor was moved to the Mobile county jail soon after that.

This statement was made on my own free-will and not under duress, and is a true account of the happenings following my arrest on Saturday night June 29, 1946.

(Signed) Lawrence H. Franklin, Jr.

Subscribed and sworn to before me, this 11th day of September, 1947. (Signed) Marshall F. Robinson, Notary Public. My commission expires 1950. (Seal.)

[fol. 11] EXHIBIT "C" TO PETITION

Mobile Alabama, September 11, 1947.

My name is Calvin Jones. I am 19 years of age. I live at 199 John Street, Prichard, Alabama. I am married and have two children.

On or about Saturday night, June 29, 1946, Lawrence H. Franklin, Samuel Taylor, Johnnie Kimbrough and I, were arrested on Craft Highway and Butler Avenue about 11 o'clock or 11:30 o'clock. The arrest was made by Prichard police officers in a scout car. We were taken to the Prichard jail on charges of having robbed a white man. Before we were put on docket about five or six of the Prichard police officers beat us up and knocked us down. Then I was taken into an adjoining room by two policemen who beat me with a club and their fists. They tried to force me to say that I had robbed the white man who reported that he had been held up by some colored men. I told them that I didn't do it. They kept me in the little room for about fifteen minutes.

Lawrence Franklin was the next one taken into the little room. When he came out of the room he had some knots on his head, his nose was bleeding and also his mouth.

Johnnie Kimbrough was next taken into the adjoining room. Blood was running out of his head.

Samuel Taylor was the last one taken into the little room. He was kept in there about fifteen or twenty minutes. His eyes were swollen, his nose and mouth were bleeding, and blood was also flowing from a bruise behind his ear.

We were then locked in separate cells, which I believe was done so we couldn't talk to each other.

I could hear someone hollering that night but I do not know who it was, as Johnnie Kimbrough and I were placed near each other.

The next week, I don't recall the day, all of us were taken out of our cells, lined up and taken up to the docket room.

A white girl and a police officer were on the outside. She whispered to the policeman. Then he pointed at me. She shook her head. Then the officer pointed toward Samuel Taylor. She bowed her head as if to say "yes."

They locked Lawrence, Johnnie and me up again in separate cells. They put Samuel in another part of the jail.

[fol. 12] About an hour or an hour and a half after that I heard Samuel holler.

I could hear the officers asking him, "didn't you do it?" He told them "no." They kept beating him and I finally heard him say "yes."

I heard them beating him again that week. I later learned that they sent him to town to the Mobile county jail.

This statement was made on my own free will and was not given under duress.

It is a true account of events following my arrest on Saturday night, June 29, 1946.

(Signed) Calvin Jones.

Subscribed and sworn to before me, this 11th day of September, 1947. (Signed) Marshall F. Robinson, Notary Public. My commission expires 1950. (Seal.)

[fol. 13] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

MOTION TO DISMISS PETITION FOR LEAVE TO FILE A PETITION FOR WRIT OF ERROR CORAM NOBIS—Filed September 25, 1947

Comes the State of Alabama, respondent in the above styled cause, and moves the court to dismiss the petition for leave to file a petition for writ of error coram nobis here-

tofore filed and for grounds of said motion states the following both severally and separately:

1. For that this court has judicial knowledge of the record of appeal to this court and the opinion of this court in the case wherein the petitioner, Samuel Taylor, was defendant and appellant in said appeal, and the State of Alabama was appellee in said appeal numbered First Division 297, which appeal was affirmed on the 24th day of April, 1947.

2. For that the allegations of said petition are not sufficient as a matter of law to cause this court to grant the relief therein prayed for.

3. For that the petition alleges facts that attempt to show that petitioner was convicted for the crime of rape in the Circuit Court of Mobile County on evidence of a confession obtained by force from petitioner and this court judicially knows that said confession was held by this court and the circuit court to be voluntary and admissible in evidence.

[fol. 14] 4. For that this petition is an attempt to retry an issue of fact, to-wit, whether or not the confession or confessions of petitioner to the crime of rape were voluntary or involuntary, which issue has been tried and decided adversely to petitioner both in the Circuit Court of Mobile County and in this court.

5. For that the allegations of the petition are patently unreasonable.

6. For that the allegations of the petition lack the probability of truth.

7. For that the allegations of the petition that petitioner was mistreated by police officers of Prichard, Alabama, and because of such mistreatment involuntarily confessed to said crime of rape are unreasonable or lack the probability of truth since this court judicially knows the circumstances under which said confessions were made.

8. For that this court and the Circuit Court of Mobile judicially know and have held that the said confessions of petitioner to the crime of rape were made by petitioner

under circumstances showing the voluntary nature thereof.

9. For that the allegations of the petition show that petitioner at the time of his trial knew of his alleged mistreatment and did not disclose such alleged facts to his counsel.

10. For that the allegations in the petition that counsel for petitioner at his trial did not know of petitioner's alleged mistreatment before the confession are unreasonable or lack the probability of truth since this court judicially knows from the said record on appeal that said counsel attempted to show such alleged facts on cross examination of witnesses who testified to the voluntary nature of said confessions.

11. For that this court judicially knows that at the trial of petitioner petitioner's counsel knew of the alleged mistreatment of petitioner as alleged in the petition.

12. For that this court judicially knows that at the trial of petitioner petitioner's counsel knew of the alleged mistreatment of petitioner but failed to prove such facts.

[fol. 15] 13. For that this court judicially knows that at the trial of petitioner it was proved that said confessions of petitioner were voluntarily made.

14. For that this court judically knows that the judgment of the Circuit Court of Mobile County adjudging petitioner guilty of rape was not based solely on the confession or confessions of petitioner.

15. For that this court judically knows that petitioner at his trial gave no proof tending to establish his innocence, and further that the petition does not allege a meritorious defense to the charge of rape.

16. For that said petition is an attempt by petitioner to question the merits of the case in which he was convicted for the crime of rape.

Wherefore, respondent, State of Alabama, moves this court to dismiss the petition for leave to file a petition for writ of error coram nobis.

(Signed) A. A. Carmichael, Attorney General; Bernard F. Sykes, Assistant Attorney General.

I hereby certify that I have mailed, properly stamped and addressed, a copy of the foregoing motion to Messrs. James, Elmore & Adair, opposing counsel, of Montgomery, Alabama, on this the 25 day of September, 1947.

(Signed) Bernard F. Sykes, Assistant Attorney General.

[fol. 16] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

Comes the State of Alabama and in support of its motion to dismiss the petition for leave to file a petition for writ of error coram nobis files the attached affidavit and exhibits thereto.

(Signed) A. A. Carmichael, Attorney General; Bernard F. Sykes, Assistant Attorney General.

I, Bernard F. Sykes, hereby certify that I have mailed a copy of the foregoing to Hon. Nesbitt Elmore, Attorney at law, Montgomery, Alabama, opposing counsel, on this the 29th day of October, 1947.

(Signed) Bernard F. Sykes, Assistant Attorney General.

[fol. 17] EXHIBIT IN SUPPORT OF MOTION TO DISMISS—Filed October 29, 1947

STATE OF ALABAMA,
Mobile County, ss:

AFFIDAVIT

My name is Nelson E. Grubbs, and I am Associate Toxicologist in the Department of Toxicology and Criminal Investigation, Mobile Division, for the State of Alabama. I am personally acquainted with Samuel Taylor who has been convicted for the crime of rape in Mobile County.

I am an experienced and skilled photographer, and I have examined eight photographs hereto attached and marked Exhibits A, B, C, D, E, F, G, and H, respectively. I took these photographs of Samuel Taylor on the 3 day of

July, 1946, at 5:37 P. M. o'clock. I developed the photographs, and the prints hereto attached.

These photographs were taken in Prichard, Alabama, at the time stated above. I know that Samuel Taylor made a statement in connection with the crime of rape immediately prior to the time that these photographs were taken by me.

These photographs are correct and represent faithfully the condition of the body of Samuel Taylor at the time above mentioned.

Nelson E. Grubbs.

STATE OF ALABAMA,
Mobile County, ss:

Personally appeared before me Nelson E. Grubbs, a Notary Public in and for said State and County, Nelson E. Grubbs, who is personally known to me, and after being first duly sworn states upon oath that the above statement is true and correct.

This the 28 day of October, 1947.

George R. Marsh, Notary Public for State at Large.

[fol. 18] [Exhibits A, B, C, D, E, F, G and H, respectively, are photographs and are attached to the original and cannot be copied here but can be forwarded on request to the Clerk of the Supreme Court of the United States.]

[fol. 19] Minute entry of argument and submission, October 29, 1947, omitted in printing.

[fol. 20] IN SUPREME COURT OF ALABAMA—OCTOBER TERM, 1947-48

1 Div. 308

EX PARTE SAMUEL TAYLOR

IN RE: SAMUEL TAYLOR,

vs.

STATE OF ALABAMA

Petition for Writ of Error Coram Nobis

OPINION—Filed November 13, 1947

GARDNER, Chief Justice:

This is a petition for the issuance of the common law writ of error coram nobis; the case being originally assigned to Mr. Justice Brown for study and preparation of an opinion.

Upon consideration of the cause in consultation, the members of the court were not in agreement with the views entertained by Mr. Justice Brown and of consequence a brief statement of the views of the majority is here appropriate.

The averments of the petition are set out with much detail in what is now the dissenting view of Justice Brown, and need no repetition here. The substance of the petition is that the confessions obtained from the defendant, Samuel Taylor, were involuntary as a result of threats and physical violence, from which he was placed in great fear and which fear continued up to and through the trial of the cause. This petition is sworn to and in support thereof are the affidavits of one Johnnie Kimbrough, now twenty-two years of age, serving a ten-year sentence for robbery at Kilby Prison in Montgomery; Lawrence H. Franklin, Jr., now twenty-one years of age, who was incarcerated in the jail in Prichard at the time this defendant was arrested; [fol. 21] and Calvin Jones, now nineteen years of age, and who was also under arrest and so incarcerated at the time of defendant's imprisonment. Upon this petition and these affidavits the court is asked to grant the writ of error coram nobis based solely upon the charge that the defend-

ant was under duress at the time the confessions were made.

It appears that presumably out of due caution the authorities had, soon after his arrest and immediately following his confession on July 3, had pictures of the defendant taken in a nude condition which are here exhibited, which disclose no indications on the body of any physical violence as set forth in the petition. But under the authorities this court is not to determine the truth of the allegations of the petition and we lay no particular stress upon the photographs here exhibited.

In passing upon the petition for writ of error coram nobis this court is in the exercise of a wise discretion and must look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof, and grant leave only when it appears that the proposed attack on the judgment is meritorious.—24 C. J. S. p. 152.

We are fully mindful of petitioner's rights under the due process clause of the Federal Constitution and the responsibility resting upon this court in cases of this character. We not only are mindful of responsibility so far as this defendant is concerned, but also feel like responsibility to society in the enforcement of the criminal laws of our state. In *Johnson* v. *Williams*, 244 Ala. 391, 13 So. (2d) 683, the petition sought for the first time to raise the question as to the regularity of the jury venire. This question was not presented upon the trial of the case. The holding there was that the objection came too late, and numerous authorities are cited to the effect that one may waive, and does waive his constitutional right, if he fails to assert or claim it at the appropriate time and place and in accordance to the established course of procedure. We therein further observed: "We have been cited to no case, either State or Federal, holding to a contrary doctrine. Indeed, such a principle, once recognized, would utterly destroy the doctrine of res adjudicata so far as criminal cases are concerned, reduce the trial of a defendant charged with crime [fol. 22] to a mere game of chance, and make a mockery of the courts."

Upon the trial of this cause the petition admits that the defendant was represented by able counsel. Upon a consideration of this cause in this court, as found reported

in *Taylor* v. *State*, — Ala. —, 30 So. (2d) 256, the counsel appointed by the court for the defense diligently presented the questions raised in the record both by oral argument and in full and complete brief, and a reading of the record, of which, of course, we take full notice here, (*Johnson* v. *Williams, supra*) demonstrates that the defendant was ably represented. The question of confessions was duly treated. There were two or three of these confessions made at different times, one of which was signed by the defendant. Not only so, but the defendant having before him three or four girls pointed out this fourteen year old victim of his crime as the one whom he had assaulted. The question of the voluntary character of the confession was duly considered and treated in the opinion on former appeal. Nor did the record contain the slightest indication that the defendant, a negro twenty years of age, was ignorant and in any manner subnormal.

The offense was committed in April, 1946, and defendant arrested the latter part of June of that year and on July 3, 1946, made his first confession. Later another confession was made before the Mayor of Prichard and others, in which he answered in detail the numerous questions asked by the solicitor. As pointed out on the former appeal this confession was also preceded by proof of its voluntary character. The record supports the holding as declared in the appeal that there existed not the slightest indication upon the trial of his case that there was a single threat offered or that he in any manner was under any character of duress upon the making of any of these confessions.

But in this case, as in the case of *Johnson* v. *Williams*, *supra*, defendant's conviction was not rested alone upon a confession. There was ample proof to sustain his conviction regardless of the confession. The fourteen year old girl positively identified him upon his arrest and upon the trial of the cause. She stated she knew he was the man. True she had mistakenly identified another negro, but she pointed out the difference and was most positive on the trial in her statement that this defendant was the perpetrator of the crime. Not only so, there was clothing iden-[fol. 23] tified as that of the defendant and worn on that occasion. The trousers worn by the defendant at the time were examined by the toxicologist, who testified to discovery of blood stains, as well as semen stains. Upon these matters there was no dispute.

We recognize that the defendant was in the exercise of a constitutional right in declining to take the stand and subject himself to cross-examination as a witness. But, nevertheless, in consideration of this petition, we cannot close our minds to the fact that the defendant not only made no denial of his guilt but offered absolutely no proof as to his whereabouts when this crime was committed. And we should bear in mind the well established rule in considering petitions of this character, the writ is not intended to relieve a party from his own negligence, and that facts known to the accused at the time of trial and not brought to the court's attention through his negligence, afford no ground for relief.—24 C. J. S. p. 148. Petitioner now asks this court to permit the lower court to reopen this cause upon the grounds that his confessions were involuntary—a confession obtained on July 3, 1946, his trial not until October 29, 1946. He was represented, as he admits and as this court knows, by able counsel, and yet he states in his petition that he told his counsel that the confessions were voluntarily obtained. To excuse this conduct on his part he asks this court to believe that he so stated to his counsel because of fear generated by treatment he had received several months before, on July 3, 1946. Petitioner was a negro twenty years of age. The girl a white girl fourteen years of age. The trial was conducted with much care. There is nothing in the record on former appeal to indicate the slightest appeal to prejudice, nor was a single untoward incident recorded. We think it is asking entirely too much of the court to believe that this defendant, in the secrecy of consultation with his own able counsel, would say to counsel in substance that there was nothing upon which to base an objection to his confessions, solely because he was under fear generated by treatment which he claims was accorded him on July 3, nearly four months previous.

As we have observed, the court should look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. And it must also be made to appear that the proposed attack on the judgment [fol. 24] of conviction is meritorious. The writ was not designed to enable the guilty to escape punishment.—24 C. J. S. p. 143. As we have observed there was ample evidence, aside from the confessions, upon which a verdict of guilt could well be rested, and the averment of the petition that his conviction was rested upon the confessions is

unsustained by the record. The court should also bear in mind this writ is only due to be granted when it is made clearly to appear that petitioner has a valid defense.—24 C. J. S. p. 145. Giving due consideration to petitioner's constitutional right not to testify and upon the trial make a denial of his guilt, we nevertheless are impressed that in the carefully prepared petition here presented there appears no positive statement of denial of guilt or present protestation of innocence.

But we forego further discussion. Upon due consideration we conclude that the averments of the petition are unreasonable and that there is no probability of truth contained therein, and that the proposed attack upon the judgment is not meritorious.

We, therefore, conclude that the petitioner has not made out a case which calls upon this court to grant leave to file the writ of error coram nobis, and it will accordingly be here denied.

Petition denied.

Foster, Livingston, Lawson, Simpson and Stakely, JJ., Concur.

Brown, J., dissents.

DISSENTING OPINION

BROWN, Justice (Dissenting.)

This is an original application to this court for leave to file a petition for the common law writ of error coram nobis in the Circuit Court of Mobile County, wherein petitioner was tried and convicted of a capital felony and sentenced to suffer death by electrocution, which said judgment was affirmed here on the 24th day of April, 1947, the style of the case being *Taylor* v. *State*, 1 Div. 279, reported in 30 So. 2d 256.

The defendant's petition alleges that he was arrested by police officers of Prichard, Alabama, at 11:30 P. M. on June 29, 1946, and at the time of his arrest three other men, towit, Lawrence H. Franklin, Johnnie Kimbrough and Calvin Jones were also arrested and incarcerated in the city jail of Prichard, Ala. That before they were "docketed" or placed in a cell, police officers on duty at that time whose [fol. 25] names are unknown to petitioner "beat, kicked and bruised your petitioner and said three men in an effort to obtain a confession of a robbery. That after Petitioner

and the three other prisoners were docketed they were taken by said police officers one at a time in a small room in said jail. That all four of said men were brutally beaten, kicked and bruised in an effort to obtain said confession. That your Petitioner did, in fact, confess to said robbery but that after he had made this confession, he was retained in said room in the Prichard, Alabama, jail by said police officers and told that he must make a confession of the rape for which he was later convicted and sentenced by the Circuit Court of Mobile County as aforesaid. That he was further beaten, kicked and bruised by said police officers but refused to make a confession of said rape. That he was thereafter returned to his cell in the said City Jail at Prichard, Alabama, by said police officers at an early hour in the morning of Sunday, June 30, 1946. That he was not further molested throughout the day of said Sunday but that during the late hours of Sunday night, June 30, 1946, and early morning July 1, 1946, he was further beaten, bruised, threatened and intimidated by the police officers of the City of Prichard, Alabama, and was told he must confess to said rape. That your Petitioner still refused to make a confession of said crime although he was beaten, bruised and threatened as aforesaid. That said mistreatment and questioning by the police officers of the City of Prichard continued for a period of several hours and upon Petitioner's failure to confess to said crime he was again returned to his cell where he was left unmolested throughout the day of Monday, July 1, 1946. That on the night of Monday, July 1, 1946, and the early morning of Tuesday July 2nd, 1946, Petitioner was again subjected to similar mistreatment and questioning as on the previous night. Again your Petitioner maintained his innocence of said crime and after several hours was returned to his cell where he was left unmolested until the night of Tuesday, July 2 and early morning of Wednesday, July 3, 1946. On that night he was again visited by the police officers of the City of Prichard as aforesaid and was subjected to more brutal and cruel beatings and mistreatment. He was told unless he did confess to the crime of rape as aforesaid he would be continually subjected to such brutal mistreatment and intimidation until he did, in fact, confess to said crime. That [fol. 26] your Petitioner was so fearful for his life, health and safety that he made a confession of said crime in the early morning hours of Wednesday, July 3, 1946. He was

told by said police officers of the City of Prichard that if he made any mention of the fact that he was beaten and mistreated as aforesaid that he would be subjected to even more cruel beatings and mistreatment. That at approximately three o'clock in the morning of July 3rd, 1946, Petitioner was brought in to a carefully selected and arranged group for a formal confession of said crime of rape. That none of the persons who witnessed said formal confession which was later introduced in evidence on the trial of said cause as aforesaid, had any knowledge of the fact that Petitioner had been beaten, threatened, abused and mistreated by the police officers of the City of Prichard as aforesaid, in order to obtain said confession, with the exception of Prichard Police Sergeant 'Buster' Wilkes who had participated in the beatings of Petitioner since his arrest on Saturday, June 29, 1946. That said Sergeant 'Buster' Wilkes perjured himself on the trial of said cause by falsely testifying that Petitioner was not subjected to any mistreatment in connection with making said confession. Attached hereto and made a part hereof, marked 'Exhibit A,' is an affidavit of Johnnie Kimbrough, substantiating the above facts. Attached hereto and made a part hereof, marked 'Exhibit B' is an affidavit of Lawrence Franklin, substantiating the above facts. Attached hereto and made a part hereof, marked 'Exhibit C,' is an affidavit of Calvin Jones, substantiating the above facts.

"That your petitioner was put in such great fear for his future safety after having been subjected to such mistreatment as aforesaid, and after having been threatened with even worse physical mistreatment by the police officers of the City of Prichard as aforesaid if your Petitioner did mention said beatings to any person, that he failed and refused by reason of such fear to mention this mistreatment and extortion of said confession from him to his attorney who was appointed by the Court to defend him on the trial of said cause in the Circuit Court of Mobile County as aforesaid. That your Petitioner at that time was ignorant of his rights and was wholly ignorant of court procedure and had no knowledge of his rights or how to protect his interests. That when your Petitioner was asked by his said attorney who represented him on the trial of said cause as aforesaid if he was mistreated or beaten in any fashion by the law enforcement officers in connection [fol. 27] with the giving of said confession he replied in

the negative, being uneducated and ignorant as aforesaid, and fearful of further reprisals by said police officers. That while he (was) ably represented on the trial of said cause in the said Circuit Court of Mobile County, Alabama, by said attorney, his attorney was unaware of the facts averred above relating to said confession, and after having been told by your Petitioner that he was not subjected to any mistreatment, said attorney had no reason to inquire into the above facts and could not have through diligence discovered the above facts."

The petition further alleges that the attorney now representing petitioner had no connection with the case until after petitioner's conviction and the affirmation of the case by the Supreme Court of Alabama. And alleges that his "imprisonment, conviction and sentence of death and his present imprisonment is the result of a deprivation of due process of law and of his rights guaranteed, to him by the Constitution of the State of Alabama and his conviction, sentence of death and his present imprisonment is the result of deprivation of rights guaranteed to your Petitioner by the Constitution of the United States of America, in that the law enforcement officers of the State of Alabama obtained his conviction by the introduction in evidence at the trial of said cause a confession which was forcibly extorted from your Petitioner as aforesaid, thereby denying to him due process of law and the rights guaranteed to him by and under the Constitution of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America."

This application for leave to file the petition for writ of error coram nobis was submitted on the motion of the attorney general to dismiss the petition on numerous and sundry grounds, among others, that the "allegations of said petition are not sufficient as a matter of law to cause this court to grant the relief therein prayed for," together with affidavit of Nelson E. Grubbs, Associate Toxicologist, and photographs of the petitioner exhibited, which were taken on the 3rd day of July, 1946, at "5:37 P. M. o'clock," without countervailing evidence by affidavit or otherwise.

The effect of the motion to dismiss is to confess the truth of the allegations of the petition for the purpose of said motion.

The petition sets up facts extraneous of the record and is supported by the oath of petitioner and affidavits of three

[fol. 28] witnesses who claim to have knowledge of the facts and the affidavit of Nelson E. Grubbs, the Toxicologist, and the photographs taken according to his affidavit on "3rd day of July, 1946, at 5:37 P. M. o'clock." The verified petition, said affidavits and photographs will be treated as evidence.—*Ex Parte Green, Superintendent of Banks,* 221 Ala. 298, 129 So. 72.

It seems to be well settled that the writ of error coram nobis will not reach facts actually determined in the original proceeding nor will it lie when a proper remedy is afforded by appeal or ordinary writ of error nor for false testimony at the trial. The function of a writ of error coram nobis is limited to error of fact for which the statute provides no other remedy, which fact did not appear or was unknown to the court when judgment was pronounced and if known would have prevented the judgment and which was unknown and could not have been known to the petitioner by the exercise of reasonable diligence in time to have been otherwise presented to the court, *unless he was prevented from so presenting them by duress, fear or other sufficient cause.* This court is not called upon to determine the truth of the allegations of the petition for leave to file application for writ of error coram nobis in the circuit court. But will examine the petition in connection with the record in this court on appeal of said cause. The question presented to us is whether or not the allegations of the petition make adequate showing of substantiality of the petitioner's claim to enable the court to determine whether the facts alleged would afford *prima facie* just grounds for application to the circuit court, whether the allegations of the petition supported by the affidavits and other evidence show a probability of the truth thereof.—*Ex parte Burns,* 247 Ala. 98, 27 So. 2d 517; *Chambers et al.* v. *State,* 152 So. 437 (Fla.); *Ex parte Lee,* 248 Ala. 246, 27 So. 2d 147.

It is well settled in Alabama that extra-judicial confessions alleged to have been made by a defendant charged with crime are presumed to be involuntary and the burden is upon the state to show that they are voluntary.—*Jackson* v. *State,* 226 Ala. 72, 145 So. 656. In *Redd* v. *The State,* 69 Ala. 255 (259), it was observed:

"* * * The settled rule of this court is, that all such confessions are prima facie involuntary, and they can be rendered admissible only by showing that they

are voluntary and not constrained —, or, in other words, free from the influence of *fear* or *hope*, applied to the prisoner's mind by a third person.—[fol. 29] *Murphy* v. *The State*, 63 Ala. 1; *Johnson* v. *The State*, 59 Ala. 37; *Porter* v. *The State*, 55 Ala. 95; Clark's Man. Cr. Law, § 2480; Clark's Cr. Dig. § 326; 1 Brick, Dig. p. 509, § 859. It is no sufficient objection that they are elicited by mere adjurations to speak the truth, for this may be properly construed as advice to assert *innocence*, as well as to confess *guilt*. —*Aaron* v. *The State*, 37 Ala. 106; *King's case*, 40 Ala. 314; Whart. Cr. Ev. §§ 647, 672. Nor are confessions rendered inadmissible by the mere fact of being made to sheriffs, constables, jailors, or other officers of the law having the legal custody of the prisoner.—*Aaron's case, supra;* Whart. Cr. Ev. § § 647, 649. The true test is, whether, under all the surrounding circumstances, they have been induced by a threat of promise, express or implied, operating to produce in the mind of the prisoner apprehension of harm or hope of favor. If so, whether true or false, such confessions must be excluded from the consideration of the jury as having been procured by undue influence.—Whart. Cr. Ev. § 673; *Porter* v. *The State*, 55 Ala. 95. • • • ."

" '*So when a confession has been once obtained through the influence of hope or fear, confessions of a similar character subsequently made, as is uniformly held, may be inferred to have originated from the same motive, and in the absence of evidence to the contrary showing that the original influence had ceased, or been dispelled, they are inadmissible.*'—*Redd* v. *State, supra,* (69 Ala. 255); Note 6 Am. St. Rep. 249."—[Italics supplied.]—*Jackson* v. *State, supra.*

The record on petitioner's appeal shows that on the trial of the petitioner the state was allowed to prove alleged confessions made by the defendant by Mayor Dismuke, Ben Dixon, G. M. Porter and Chief of Police E. C. Anderson on predicates that at the time the confession was made in their presence, commencing on July 3rd at 3 o'clock A. M. and at other times subsequently thereto, that no abuse was administered, no threats made nor promises of reward or other inducements were made or offered to induce the

defendant to confess. While it appears that the attorney appointed by the court to represent the defendant on the trial strenuously cross-examined some of these witnesses as to what had previously occurred, the only admission that he obtained from any of them was from G. M. Porter, who gave the following answers to the following questions:

"Q. Had you been talking to him (the defendant) about this case?

"A. I had not.

"Q. Had anyone else to your knowledge been talking to him about this case?

"A. Not to my knowledge. I couldn't say. I know they had but I couldn't swear. * * *"

The witness Dismuke testified that the defendant when making his confession of the crime was friendly and was smiling.

[fol. 30] Sergeant Wilkes of the Police Department was examined by the state, his testimony going to show that he was on duty at the time of defendant's arrest and in charge of police headquarters and jail wherein petitioner was incarcerated after his arrest, and that the prosecuting attorney came to the jail at the time when the prosecutrix was present and five negro prisoners, including the petitioner, were brought in and lined up and carried into the office of the sergeant, apparently for the purpose of forcing the defendant to identify his alleged victim and give evidence against himself. —*Smith* v. *State*, 247 Ala. 354, 24 So. 2d 546. Sergeant Wilkes was not interrogated by the solicitor in respect to whether or not the defendant was abused, corporal punishment inflicted on him or whether he was made any offer of reward or hope of benefit to induce him to confess prior to the morning of July 3rd at 3 o'clock A. M. On cross-examination by defendant's attorney, Wilkes (referring to defendant) testified that the occasion on which the case was broken was 3 o'clock in the morning of July 3rd, 1946, the defendant's attorney asked the witness:

"Had you been, let us say, interrogating this boy prior to that time?

"A. I talked to him previous, about nine o'clock that night."

The witness was then asked:

"Q. And along about three he *waw* the light and decided he wanted to talk to you, is that right?"

(The solicitor objected to this question, was sustained and defendant's counsel withdrew the question).

"Q. Was it about three o'clock in the morning when he decided to talk to you about this case?

"A. Yes, sir.

"Q. And that was when you realized that the case had been broken was it?

"A. That is right. * * * *."

The photographs show marks on the defendant's body on his right side, on his neck, on his thigh and across his breast. Two of the photographs were taken when he exposed the right side of body to the camera; two exposed the front of his body; one exposed his back with the exception of his head from the ears up and his legs from the rump down. [fol. 31] In the pictures taken from his exposed left side, the top of his head from the hairline up was not shown and the last picture (Exhibit 8) was taken with two men standing belly to belly with the prisoner, the expressions on their faces indicating hostility with the prisoner apparently forcing his face into a smile. This photograph gives character to the testimony of the witness Dismuke that when petitioner was brought into his presence at 3 o'clock in the morning of July 3rd, he was smiling and very friendly. This, although he was at the time confessing his guilt of a crime that was calculated to send him to the electric chair.

The prisoner did not take the stand and testify in his own behalf. He could only become a competent witness at his own election, and by virtue of the statute his failure to so elect created no presumption "against him on his trial or other criminal proceedings."—Code of 1940, Title 15, § 305.

The petition considered in the light of the record shows a reasonable probability of the truth of the allegations in the petition and entitles petitioner to leave to seek relief in the trial court. —*Brown* v. *State*, 32 Ala. App. 500, 27 So. 2d 226; *Chambers et al.* v *State*, 152 So. 437 (Fla.); *Chambers* v. *State*, 187 So. 15. (Fla.). If the petitioner in his application must affirm his innocence and make proof rebutting the implications of guilt arising from the judgment of conviction procured by use of coerced confessions before he can obtain leave to file a petition for the writ of error coram nobis to establish want of due process under

the constitution, as the majority opinion holds, the guarantees of the constitution become as "sounding brass and tinkling cymbal"—mere platitudes—without force or substance and a defendant put on the "rack" and forced to confess his guilt is without remedy or hope. *Chambers et al.* v. *Florida*, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716.

I am, therefore, of the opinion that leave should be granted to petitioner to file his application for writ of error coram nobis in the Circuit Court of Mobile County wherein he was tried, convicted and sentenced to death and respectfully dissent.

[fol. 32] IN SUPREME COURT OF ALABAMA

Present Chief Justice Gardner, and Associate Justices Foster, Lawson and Stakely and Brown, Livingston and Simpson.

1 Div. 308

MOBILE CIRCUIT COURT

EX PARTE SAMUEL TAYLOR

PETITION FOR WRIT OF ERROR CORAM NOBIS

Re: SAMUEL TAYLOR,

vs.

STATE OF ALABAMA

JUDGMENT—November 13, 1947

Comes the petitioner by attorney, and the petition for an order granting leave to file a petition in the Circuit Court of Mobile County, Alabama, for a Writ of Error Coram Nobis, and the State's motion to dismiss the Writ of Error Coram Nobis being argued and submitted and duly examined and understood by the Court, it is considered, ordered and adjudged that permission to file a petition for Writ of Error Coram Nobis in the Circuit Court of Mobile County, Alabama, should be and is hereby denied.

It is further considered, ordered and adjudged that said petition be and the same is hereby denied.

It is further considered, ordered and adjudged that the costs incident to these proceedings be and the same are hereby taxed against petitioner, Samuel Taylor, for which costs let execution issue.

[Gardner, C. J., Foster, Livingston, Lawson, Simpson and Stakely, JJ., concur. Brown, J., dissents.]

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[fol. 33] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

APPLICATION FOR REHEARING—Filed November 26, 1947

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Comes Samuel Taylor, Petitioner in the above styled cause, by and through his attorney of record, Nesbitt Elmore, and respectfully applies unto this Honorable Court for a re-hearing in the above styled cause, and respectfully assigns the following grounds, separately and severally, therefor:

1. There is manifest error in the opinion and judgment of the Court rendered on, to-wit: November 13, 1947 in form and manner as set out in Brief filed herewith, in support of this application.

2. Petitioner is aggrieved by the opinion rendered and judgment entered by this Honorable Court on, to-wit: November 13, 1947, in form and manner as set out in the Brief filed herewith in support of this application.

3. The Court has erred in refusing to grant the prayer of the Petitioner, as shown by Brief filed herewith.

4. As a result of the opinion and judgment of this Court rendered on, to-wit: November 13, 1947, Petitioner is being deprived of his liberty and is about to be deprived of his life, without due process of law in violation of the Constitution of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

Wherefore, Petitioner prays that the opinion rendered on, to-wit: November 13, 1947 by this Honorable Court be recalled and on further consideration of the cause the judgment of this Court be reversed and an order entered granting Petitioner leave to file his Petition in the Circuit Court of Mobile County, Alabama for a Writ of Error Coram Nobis.

Respectfully submitted, (Signed) Nesbitt Elmore, Attorney for Petitioner.

[fol. 34] I hereby certify that I have delivered a copy of the foregoing Application for Re-Hearing to the Honorable A. A. Carmichael, Attorney General of the State of Alabama, State Capitol, Montgomery, Alabama, by personally handing him a copy hereof, on this the 26 day of November, 1947.

(Signed) Nesbitt Elmore, Attorney for Petitioner.

[fol. 35] In Supreme Court of Alabama

[Title omitted]

Present Chief Justice Gardner, and Associate Justices Brown, Foster, Livingston, Lawson, Simpson and Stakely.

Order Denying Rehearing—December 4, 1947

It Is Ordered that the application for rehearing filed by Petitioner on November 26, 1947, after being duly examined and considered by the Court, be and the same is hereby overruled.

[fols. 36-37] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 38] SUPREME COURT OF THE UNITED STATES—OCTOBER TERM, 1947

No. 400, Misc.

SAMUEL TAYLOR, Petitioner,

vs.

STATE OF ALABAMA

On petition for writ of Certiorari to the Supreme Court of the State of Alabama.

ORDER GRANTING CERTIORARI—April 5, 1948

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted and the case is transferred to the appellate docket as No. 721.